



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Excalibur Systems, Inc.

File: B-272017

Date: July 12, 1996

Robert F. Reklaitis, Esq., Nixon, Hargrave, Devans & Doyle, for the protester.
Bill Weil, Condor Engineering, Inc., the intervenor.
Melissa K. Erny, Esq., Department of the Navy, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Although the solicitation provided that an offeror's past quality performance was more important than price in determining the offeror representing the best value to the government, the agency nevertheless could properly award the contract to a lower-priced offeror with no past quality performance history where the solicitation also provided that price alone would be considered in evaluating first-time offerors or offerors for whom current past quality performance information was not available.

DECISION

Excalibur Systems, Inc. (ESI) protests the award of a contract to Condor Engineering, Inc. under request for proposals (RFP) No. N00163-95-R-0044, issued by the Naval Air Warfare Center, Aircraft Division, Department of the Navy, for items for the Sensor System Improvement Program. ESI challenges the award to Condor, a lower-priced offeror.

We deny the protest.¹

The RFP contemplated the award of a firm, fixed-price contract for basic and option quantities. The RFP stated that the procurement was subject to the Navy's

¹This protest was resolved using an accelerated schedule. Bid Protest Regulations, 4 C.F.R. § 21.10(e) (1996). In addition, after reviewing various submissions from the protester and the agency, several conference calls were held at which time we advised the parties that we viewed two of the protester's issues as abandoned and two issues as having no merit. The substance of the conference calls partially dismissing the protest was confirmed in writing.

Contractor Evaluation System Red/Yellow/Green (R/Y/G) Program which is used to assist contracting officials in determining the best value to the government, price, past quality performance, and other factors considered. Under this program, accumulated contractor quality performance data is used to classify a contractor's performance in terms of the degree of risk to the government of receiving poor quality items. In this regard, an offeror's performance could be classified as either green/low risk, yellow/moderate risk, or red/high risk. First-time offerors or offerors for whom current, up-to-date quality performance history was unavailable are classified as "insufficient data" offerors.

The RFP also described the formula for determining the lowest-priced offeror. The RFP included a hypothetical example in which the formula was applied.

The RFP stated that although price would be significant in determining the successful offeror, past quality performance on the proposed item, as classified under the R/Y/G program, would be considered "essentially more important." In defining the individual R/Y/G classifications, the RFP provided that a green/low risk rating would be given greater weight or value in the evaluation than a red/high risk or yellow/moderate risk rating, and that a yellow rating would be given less weight or value than a green rating and greater weight or value than a red rating. The RFP further provided that offerors receiving insufficient data classifications "shall be evaluated solely on the basis of price [and that] [p]ast quality performance shall not be a consideration in their evaluation." (Emphasis in original.)

ESI, the incumbent contractor, and Condor submitted price proposals.² Both offerors received green/low risk past quality performance ratings. For this reason, the agency considered the offerors equal in terms of past quality performance. Since Condor's price was lower than ESI's price (by less than 1 percent), the agency awarded the contract to Condor.

ESI challenges the agency's assignment of a green/low risk rating to Condor for its past quality performance. ESI maintains that since Condor has never produced the required items, i.e., it is offering new items, it should have been assigned no more than an insufficient data rating. ESI further maintains that in light of its green/low risk rating for its past quality performance and the de minimis difference between its price and Condor's price, the agency should have awarded the contract to ESI.

The agency maintains that ESI was not prejudiced by Condor's green/low risk rating because even if Condor should have received an insufficient data classification, under the terms of the RFP the agency could not penalize Condor for the lack of a quality performance history and could properly make its best value determination

²Technical proposals were not requested.

based on a comparison of Condor's lower price vis-a-vis ESI's slightly higher price. In such circumstances, the agency states that it would still have selected Condor, the lower-priced offeror, for award.

In a best value procurement, price is not necessarily controlling in determining the offer that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the RFP, with the source selection official often required to make a cost/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost that may be associated with that proposal. In this regard, price/past performance tradeoffs are permitted when such tradeoffs are consistent with the RFP evaluation scheme. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151. Thus, where an RFP identifies past performance and price as the evaluation criteria and indicates that an offeror with good past performance can expect a higher rating than an offeror without such a record of performance, proposals must be evaluated on that basis, and ultimately the selection official must decide, if the offeror with the better past performance rating is not the low-cost offeror, whether the more costly offeror represents the best value to the government in light of the better past performance rating.

In general, we do not view RFP evaluation schemes that specify a "neutral" rating for vendors with no past performance record, see, e.g., Quality Fabricators, Inc., B-271431; B-271431.3, June 25, 1996, 96-2 CPD ¶ ____; Caltech Serv. Corp., B-261044.4, Dec. 14, 1995, 95-2 CPD ¶ 285, as precluding this same type of source selection decision-making. That is, we think that the use of a neutral rating approach, to avoid penalizing a vendor without prior experience and thereby enhance competition, does not preclude, in a best value procurement, a determination to award to a higher-priced offeror with a good past performance record over a lower-cost vendor with a neutral past performance rating.³ Indeed such a determination is inherent in the concept of best value.

Here, however, the Navy explains that its evaluation scheme does not call for rewarding a vendor with good past performance over a vendor with no relevant past performance. Rather, the Navy further explains, its evaluation scheme is intended to differentiate between those with good past performance and those with differing degrees of less than good performance. In other words, the Navy's position is that under the RFP an offeror with a green rating is superior to an offeror with a red or yellow rating but not to an offeror with the neutral insufficient data rating.

³It does, however, preclude evaluation scoring that penalizes an offeror for receiving neutral ratings. See Inlingua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340.

We have no basis to disagree with the Navy. In fact, we have previously recognized that this very evaluation scheme contemplates that "a green rating [is] to be given greater weight in the evaluation only when compared to a red or a yellow rating," and that an offeror's green rating is "not to be given greater weight in the evaluation when compared to an offeror['s] . . . insufficient data rating," so that in the circumstances here the agency is to compare the competing proposals "based on price." Espey Mfg. & Elecs. Corp., B-254738.3, Mar. 8, 1994, 94-1 CPD ¶ 180.

Accordingly, we conclude that even if Condor's green rating is changed to an insufficient data rating the award decision would not change.

The protest is denied.

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